IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7309 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISHBHAI KALUBHAI BHAVSAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7309 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 29/11/2004

ORAL JUDGEMENT

1. By this petition under Article 226 read with

Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 07.05.2004 passed by the Commissioner of Police, Ahmedabad City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in solitary single offence punishable under Sections 66B, 65AE, 81, of the Bombay Prohibition Act being GIDC (Vaavta) Police Station Pro.CR No. 5071/2004. It is recorded by the authority that the petitioner is a "boot-legger" and is involved in the activities dangerous to the society. It also reveals from the grounds of detention that subjective satisfaction of the detaining authority to the effect that the petitioner is a "bootlegger" and his activities have potentials to disturb the public order, is based on the registration of above-referred single solitary offence on 04.05.2004. It is submitted that total three persons were found involved in the offence and detaining authority has passed the order of detention against all the three persons on the basis of solitary single criminal case. On the date of offence, the petitioner was arrested and was under police remand and at that time order of detention came to be passed and executed against the petitioner. So, there was no scope for the petitioner to approach the competent Court for bail. This ground is one of the backbone of the submissions of ld. counsel Ms. Mishra for the petitioner. Ld. counsel has taken this court through all the grounds taken up by the petitioner in the memo of petition. However, she has pressed into service above-referred ground.

3. The second ground pressed into service by ld. counsel Ms. Mishra is that the order under challenge is passed mechanically and in undue haste and, therefore, it should be held that the order is arbitrary. The petitioner has raised this ground in clear terms in ground (o), which for the sake of convenience, is reproduced herein below:-

(o) The petitioner says and submits that a Solitary Offence came to be registered against the petitioner at GIDC Vatva Police Station being CR No.5071/2004 dated 04.05.2004. The statement of the two anonymous witnesses were recorded on

05.05.2004 which came tobe verified by the detaining authority on 06.05.2004 and on 07.05.2004 i.e. on very next day, the order of detention was passed. Thus, there is a mechanical exercise on the part of the detaining authority, so the privilege claimed by the detaining authority under Section 9(2) of the PASA Act by not disclosing the names and address of the witnesses is not genuine and proper. Thus, the order of detention is bad and illegal and deserves to be quashed and set aside. The petitioner further submits that on the basis of this Solitary Offence the order of detention is passed and there is no objective material before the detaining authority. Thus also on this ground the detention is bad and illegal and deserves to be quashed and set aside."

4. It is not a matter of dispute that the statements of the witnesses who have claimed privilege and protection were recorded on 05.05.2004 i.e. on the day next to the date of registration of the offence against the petitioner. That on 06.05.2004, the sponsoring machinery placed the papers for proper verification of the statements of those witnesses and they were verified on that day and order of detention came to be passed immediately on the next day i.e. on 07.05.2004. So, it is rightly argued that the privilege has been exercised mechanically by the authority vested in it under Sec.9(2) of the PASA Act. Affidavit-in-reply submitted today by ld. AGP Ms.Punani for the respondent No.2 Commissioner of Police appears to be formal affidavit and for this comment, I would like to quote relevant para-12 of the affidavit wherein the authority has attempted to explain ground (o), which is quoted herein below for the sake of convenience:-

"12. With reference to para 4(o) of the petition, I say that even though a solitary offence is registered against the detenu, taking into consideration all the relevant material placed before me, facts and circumstances of the case as well as legal provisions applicable to the facts of the case, I have passed the order of detention against the detenu with proper application of mind and on arriving at the subjective satisfaction that the detenu is a boot-legger and his anti-social activities have the potential to disturb the public order and it is necessary to detain him immediately with a view to prevent him from acting in any manner

prejudicial to the maintenance of public order. As per the settled legal position laid down by this Hon'ble Court as well as upheld by the Hon'ble Supreme Court, even in case of a solitary incidence, if the same have the potential to disturb the public order, the order of detention can be passed against a detenu. Therefore, the contention raised by the detenu in this para is not tenable at law."

It was possible for the authority to state specifically after verifying the statements on 06.05.2004 and each papers placed before it either on 07.05.2004 or on the latter part of 06.05.2004 that bundle of papers were perused by him and it was found that activities all the three accused persons apprehended by police have potentials to disturb the public order otherwise on the basis of solitary single offence, three persons normally could not have been detained under PASA Act. The grounds conveyed to the detenu don't reveal any gravity for exercise of privilege vested with the authority under sub section (1) and/or (2) of Sec.9 of the PASA Act. So, it has been rightly submitted by ld. counsel Ms Mishra that the petitioner has been wrongly branded as "bootlegger" and his activities are not dangerous to maintenance of public order, as he was involved in solitary offence under Bombay Prohibition Act and so as per the settled legal position of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051 (= (2003)2 GHJ 490), the impugned order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

"4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a

preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

6. Ratio of the above-cited decision squarely applies to the facts of the present petition and in view of above-settled legal position, the present petition requires to be allowed.

7. So far as contention raised in ground (o) that detaining authority has wrongly exercised the powers vested in it was mechanical one is concerned, the ratio of the decision in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v/s State of Gujarat & Ors., 2000(3) GLR 2926, would squarely apply. In the cited decision, proposal for detention was received by the authority on 27/08, verification of statements was made on 29/08 and order of detention came to be passed on 30/08 i.e. on the next day. Without reproducing relevant para-9 of the said judgment, it can be concluded that on the aforesaid main grounds, the order of detention requires to be quashed and set aside.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 07.05.2004 passed by the Commissioner of Police, Ahmedabad City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

*rawal